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OFFICE OF PETITIONS

In re Application of
Wagner, et al.
Application No. 09/813,454
Filed: March 20, 2001
Attorney Docket No. A0770/7037 GSE

DECISION ON PETITION

This is a decision on the petition filed March 7, 2002 (Certificate of Mailing dated March 1, 2002), pursuant to 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely submit substitute drawings in response to the Notice to File Missing Parts of Nonprovisional Application, mailed May 23, 2001. This Notice set a period for reply of two months from the mail date of the Notice to submit the filing fees, an executed oath or declaration (and surcharge for its late filing), and substitute drawings. On January 16, 2002 (Certificate of Mailing dated December 18, 2001), petitioner replied with an executed declaration and filing fees. However, because petitioner did not submit proper substitute drawings under 37 CFR 1.84, the application went abandoned on December 24, 2001. A Notice of Incomplete Reply was mailed on January 29, 2002. The mailing of the instant decision precedes the mailing of a Notice of Abandonment.

With the instant petition, petitioner submitted substitute drawings (in addition to filing fees), paid the petition fee, and made a statement of unintentional delay. 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3). The statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

Petitioner was not charged for an extension of time when he submitted his reply to the Notice to File Missing Parts on

¹ Although petitioner did not submit the entire filing fee amount in his January 16, 2002 response to the Notice to File Missing Parts, petitioner included an authorization to charge any missing fees to his deposit account. Accordingly, the filing fees should have been charged, and petitioner should not have received a Notice of Incomplete Reply with respect to the filing fees. However, as petitioner failed to submit substitute drawings, the application did in fact go abandoned, and the issue is moot.

January 16, 2001. The necessary five month extension of time fee (\$980) to make that reply timely has now been charged to Deposit Account No. 23-2825, as authorized by the General Request for an Extension of Time, filed January 16, 2001.

The application file is being forwarded to the Office of Initial Patent Examination for completion of pre-examination processing.

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-0272.



Cliff Congo
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Office of the Deputy Commissioner
for Patent Examination Policy